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December 8, 2004

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Unbundled Access to Network Elements*, WC Docket No. 04-313; *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers;* WC Docket No. 01-338

Dear Ms. Dortch:

Covad submits this letter to respond to ILEC claims that reinstitution of line sharing will diminish, rather than increase, provision of broadband service. Such claims are illogical and contradicted by the empirical evidence.

As Covad demonstrated in the *TRO* proceedings, it was line sharing that spurred the ILECs to begin providing retail DSL service. Covad showed that although the ILECs had DSL technology available to them long before commercial DSL products were brought to market, it was only after CLECs began offering DSL that the ILECs rolled out their own DSL products.[1] Covad further showed that only additional CLEC entry prompted the ILECs to begin reducing their DSL prices.[2] The consumer surplus for residential and small business customers from CLEC entry using line sharing between 1999 and 2002 was over $1 billion and likely to be over $1.6 billion from 2003-2006.[3]

The FCC's own evidence demonstrated the same thing. That is why the Commission's Chief Economist concluded that line sharing was one of the few unambiguous successes of the 1996 Act. It brought "dramatic price reductions and dramatic jumps in DSL deployment."[4] Indeed, "for every DSL line shared, the ILECs deployed four DSL lines of their own."[5] Indeed, because of the billions of dollars invested by data CLECs relying on line-sharing, residential DSL service grew over *5000* percent in the three years that line sharing was available as a UNE,

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[1] *See* Siwek/Sun Decl. ¶ 30-37, 88-89 (attached).

[2] *Id.* ¶ 123.

[3] *Id.* ¶¶ 128, 135.

[4] Communications Daily, Oct. 20, 2003, at 10 (quoting FCC Chief Economist Simon Wilkie).

[5] *Id.*

from an initial 115,000 lines to over 6.5 million at the end of 2002.[6] As Chairman Powell explained, "[t]o date, line-sharing is the Commission's most successful broadband policy and it has generated clear and measurable benefits for consumers. It has unquestionably given birth to important broadband suppliers. The additional facilities-based competitition has directly contributed to lower prices. . . ".[7]

The Commission's decision in the *TRO* to eliminate line sharing was not based on any disagreement with the proposition that line sharing spurred ILEC deployment of advanced services, but rather primarily on the proposition that data CLECs could use line splitting in conjunction with UNE-P carriers to continue to provide DSL. Now that it appears that this will no longer be an option, the Commission must reconsider the evidence on the positive impact of line sharing. To begin with, by eliminating access to line sharing, the Commission will render largely useless the multi-billion dollar investment of competitors such as Covad in packet switches and data transmission facilities that otherwise would be used to offer competitive, facilities-based alternatives to consumers. Moreover, the elimination of line-sharing will eliminate pressure on the ILECs to expand their offering of DSL and to reduce prices for DSL. Indeed, the Commission recently concluded that one reason for the extensive use of broadband service in Japan is the competition fostered by line sharing.[8]

The evidence since the Commission's decision in the *TRO* further demonstrates the existence of these important benefits. Because the Commission grandfathered existing line-shared DSL lines and permitted CLECs to continue to add such lines for a period of time, the number of line-shared lines has continued to grow since the *TRO*.[9] At the same time, the number of ILEC-provided DSL lines has also continued to grow and the price of DSL has continued to drop.[10] There would be a significant decrease in competitive pressure on the ILECs if line sharing is eliminated.

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6 *Second Section 706 Report* ¶ 72.

7 *See* Powell TRO Statement at 2. *See also* Abernathy TRO Statement at 9 ("line sharing provides substantial procompetitive benefits"); Copps TRO Statement at 2 ("line sharing has made a contribution to the competitive landscape."); Adelstein TRO Statement at 4 ("[a]vailability of this element has made a positive contribution to the competitive landscape.").

8 *See Advanced Services Report*, Sept. 9, 2004 at 42-43.

9 At the end of 1Q 2003, immediately following the Commission's adoption of the *Triennial Review Order*, Covad had 233,000 consumer ADSL lines in service. *See* Press Release, "Covad Communications Group Announces First Quarter 2003 Results," May 15, 2003 (available at http://covad.com/companyinfo/pressroom/index.shtml). At the end of 3Q 2004, Covad had 302,500 consumer ADSL lines in service, representing nearly a 30% increase. *See* Press Release, "Covad Communications Group Announces Third Quarter 2004 Results," Oct. 20, 2004 (available at http://covad.com/companyinfo/pressroom/index.shtml).

10 The Commission's most recent report on high speed services shows an increase in ADSL lines from June 2003 to December 2003 of 24%. *High Speed Services for Internet Access: STatus as of December 31, 2003*, June 2004. This entire period followed after the Commission's adoption of a line sharing phase out in the *Triennial Review Order,* and some of this period also fell after release of the *Triennial Review Order*. This increase in ADSL lines is

There would be no countervailing benefit in terms of ILEC investment if the Commission declined to reinstate line sharing. Because line sharing only applies to legacy copper loops, there is no ILEC investment in fiber facilities to be deterred.[11] Rather, the only facilities unbundled under line sharing are legacy copper loop facilities, which have been deployed in the ground for nearly a century. Thus, while the *Triennial Review Order* opted to phase out line sharing in favor of whole loop alternatives, the Commission nonetheless continued to permit CLECs to use legacy loops to provide data services when they leased the whole loop.

In fact, the Commission's *Triennial Review Order* found that enhancing incentives to invest in upgraded transmission plant were only relevant to the Commission's unbundling analysis for fiber-containing facilities, e.g., hybrid fiber loops and fiber-to-the-home loops – not legacy copper loop infrastructures like line sharing. By contrast, for legacy loop plant, the Commission found that intramodal competition would further the goals of section 706:

> With existing copper loops, all investment in advanced telecommunications capability is necessarily limited to the equipment, not the transmission facility. Therefore, our obligation to encourage infrastructure investment tied to legacy loops is more squarely driven by facilitating competition and promoting innovation. Because the incumbent LEC has already made the most significant infrastructure investment, *ie.,* deployed loops to the customer's premises, we seek, through our unbundling rules, to encourage both intramodal and intermodal carriers (in addition to incumbent LECs) to enter the broadband mass market and make infrastructure investments in equipment.[12]

Furthermore, by the logic of the Commission's previous analysis of broadband investment incentives, continuing CLEC access to line sharing should provide ILECs with an additional motive to invest in deploying fiber facilities such as fiber-to-the-curb and fiber-to-the-home loops. As long as ILECs that deploy these fiber facilities are relieved of the obligation to provide access to the broadband transmission capabilities of these facilities, and line sharing at the same time is maintained, ILECs will be able to eliminate a significant source of broadband competition completely wherever they deploy these fiber loops. Thus, the deployment of additional fiber facilities will provide the primary means for ILECs to escape competition from line sharing. By contrast, in the absence of line sharing, ILECs will face little or no competitive pressure for the provision of consumer broadband services from CLECs. Under the

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largely consistent with the increases seen in prior reports, which showed increases of 29% from December 2001-June 2002 (29%), (27%) from June 2002 to Dec. 2002 and 19% from December 2002 to June 2003.

[11] *See, e.g.,* Commissioner Abernathy TRO Statement at 9 ("there is simply no loop upgrade that incumbents are deterred from making.").

[12] *See Triennial Review Order* at para. 244.

Commission's previous analysis of broadband investment incentives, the result would be to significantly reduce the ILECs' incentive to deploy new fiber.[13]

In addition to the forgoing discussion, attached hereto for the Commission's consideration in these dockets is Covad's previously submitted study demonstrating the benefits of line sharing to consumer welfare and broadband deployment.

Respectfully submitted,

___/s/ Praveen Goyal_________

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[13] *See, e.g.,* Chairman Powell TRO Statement at 2.